

PUBLIC DEFENDER COMMISSION MINUTES

March 17, 2006

The Boardroom

Chico Hot Springs

Pray, Montana

(As corrected at the April 21, 2006 meeting)

Call to Order:

The Public Defender Commission meeting was called to order at 8:45 a.m. by Chairman Jim Taylor.

Commissioners Present:

Betty Bischel, Edgar; Daniel Donovan, Great Falls; Mike Sherwood, Missoula; Stephen Nardi, Kalispell; James Park Taylor, Pablo; Wendy Holton, Helena; Doug Kaercher, Havre; Caroline Fleming, Miles City; and Jennifer Hensley, Butte; Tara Veazey, Helena.

Commissioners Absent:

Theda New Breast, Babb.

Other Interested Parties:

Beth Brenneman, Montana Advocacy Program; Sheri Heffelfinger, Legislative Services; Pat Gervais, Legislative Fiscal Division; Jennifer Erdahl, Legislative Audit Division; Kelli Sather, Missoula County Public Defender Office; Steve Eschenbacher, private attorney from Hamilton, Montana; Lisa B. Kauffman, private attorney from Missoula; Kris Copenhaver-Landon, private attorney from Billings, Montana; Brian Smith, Missoula County Public Defender Office; David Stuft, private attorney from Kalispell; Don Kinman, AFSCME/AFLCIO; Scott Carlson, private attorney from Kalispell; Carol Johns private attorney from Wolf Point; Sean Hinchey, private attorney from Kalispell; Lane Bennett, private attorney from Kalispell; Carl DeBelly, Yellowstone County Public Defender Office ; Mariah Eastman, Gallatin County Public Defender Office; Judge Stadler

and Judge Lympus, Kalispell District Court Judges and Ed Corrigan, Kalispell County Attorney (via conference call).

Legislative Committee Report:

Commissioner Dan Donovan told the Commission that the Legislative Committee needs to meet and strategize about how to deal with a bill dealing with police recording of defendants' statements that did not get introduced in the last Legislative Session. Chief Hood talked about contacting Mike McGrath and getting the Attorney General's support.

Commissioner Hensley discussed how to introduce bills to the Legislature and if we wanted to have a defense attorney or a human rights advocate introduce those bills.

Chairman Taylor recommended that Roger Shaw, an expert linguist in Missoula who has testified before Congress be part of this process.

Commissioner Wendy Holton also recommended that we distill the big article into an editorial in layman's terms.

Chief Hood stated that the Governor's Office wants a list of the legislation from each agency and that we're going to be heavily involved in budget matters and that should be the first priority. She recommended that we introduce only one or two new bills at this time and be very prepared to respond to the variety of county attorney legislation.

Chief Hood asked that the Legislative Committee let the Commission know as soon as possible what their legislative agenda is going to be.

Chairman Taylor asked that the members finalize the legislative package by the April meeting.

Budget Committee Report

The Budget Committee had a conference call where Harry Freebourn, Administrative Director, discussed the financial presentation that the Commission will hear later in the day. Chief Hood stated that Mr. Freebourn's presentation will cover the financial matters.

New Business

Chairman Taylor handed out a copy of Senate Bill 282 on racial profiling (refer to Exhibit 1). He would like see the Commission and Office of the State Public Defender track this issue. Commissioner Veazey would get some outside speakers on this issue and form a subcommittee on racial disparity by July or August. She also suggested that outside funding be sought out.

Chairman Taylor suggested that some of the meetings could be held at various Reservations.

Chief Hood's Report

Chief Hood stated that in the last month she has traveled a lot but will address that in the presentation. The state office continues to evolve. Mr. Freebourn has made a decision as to who will fill the Financial Manager position. Chief Hood is currently interviewing for the Contract Manager position which is an attorney position. She also has been filling the Regional Deputy Public Defender positions. She received about 35 applications for those positions. Chief Hood introduced Matt Wald from Miles City, who will be the Regional Deputy Public Defender for Region 11. She also introduced Allison Moulton from Glendive, who will be the Regional Deputy Public Defender for Region 10. Chief Hood will announce the Regional Deputy Public Defenders for Regions 2, 8 and 4 next week. The Regional Deputy Public Defenders will start July 1 per statute.

Commissioner Hensley asked about the training for the attorneys that will be starting on July 1.

Chief Hood stated that training has been factored into this budget year and there will be additional training for those attorneys that are just beginning in the practice of law.

Matt Wald stated that he understands why he can't start until July 1 and that he doesn't have a problem with it.

Mr. Freebourn stated that we will have information technology people out to the areas before July 1 to make sure that everyone is connected.

Carl DeBelly of the Yellowstone County Public Defender's Office expressed concern about transition of employees.

Chief Hood stated that the Montana State Leadership Foundation is putting on a conference on August 29th and 30th. We are signed up as a sponsor. The money for representation of children in Dependent/Neglect cases stayed with the Court. This office will only be representing the parents in those types of cases.

Chief Hood stated that the union has contacted the Board of Personnel Appeals and asked for an election. Paula Stoll, Montana State Labor Relations Division, handles this function and a letter has been sent to the Election Judge.

Chief Hood stated that health care plans have been compared and the Department of Administration will be sending people to the county offices to help with the transition of employees.

Chairman Taylor asked when all of the Regional positions would be filled and Chief Hood stated that two weeks from today ten of them would be filled.

Chief Hood handed out the Montana Department of Corrections Court-worker Pilot Project (refer to Exhibit 2) which explains the federal grant received by the Department of Corrections to advocate for Native American offenders and/or victims. Chief Hood explained that OPD (Office of State Public Defender) will be the agency to set up the program. A pilot project will be set up first and if it works out then the Legislature will be asked for money to continue and expand the program. Two court workers will be placed in the Regional office in Great Falls (Region 3).

Commissioner Hensley stated that Great Falls was chosen because Director Slaughter had statistics that a high percentage of the offenders in that area are Native American. She also informed the Commission that this is a one-time grant in the amount of \$100,000 but she is confident that Governor Schweitzer will support this program because in the future he would like to see it expand.

Chief Hood stated that we need good outreach to the Native American community in Great Falls.

Commissioner Donovan stated that he's on the Board of the Great Falls Pre-release Center and they would like to be a part of the program.

Commissioner Hensley also stated that that state Senator Shockly of Ravalli County was in the meeting via phone and he expressed concern that this program would give Native Americans special treatment.

Commissioner Donovan discussed the Methamphetamine Task Force and legislation criminalizing use and training of attorneys handling these cases.

Chief Hood stated that drug treatment courts around the state all run differently and that attorneys handling drug court cases will be contracted.

Dave Stufft, a private attorney from Kalispell discussed how public defender services are provided in the Flathead area. He advised the Commission "if something isn't broke, don't fix it". He told the Commission to make sure they don't make dangerous mistakes by changing the way that services are provided.

Commissioner Sherwood and Mr. Stufft had a discussion about the number of billable hours per year that Mr. Stufft spends on public defender cases.

Judge Stadler, Judge Lympus (District Court Judges) and Ed Corrigan, Flathead County Attorney, joined the meeting via conference call. Judge Stadler told the Commission that Kalispell has a public defender system in place that works and the Commission should hire a regional person to look at the system and decide if it needs to be changed. Judge Lympus stated that he is concerned about their system going out on June 30th and that it looks like no investigation has taken place. Ed Corrigan told the Commission that he's been the prosecutor in Flathead County since 1986 and the system works well so they shouldn't change it.

Commissioner Sherwood questioned Mr. Corrigan about the number of felonies filed per year in Flathead County to which Mr. Corrigan

responded 1400 to 1500 per year. He also stated that Bob Allison, Manager of Flathead County's public defender process, puts attorneys on a list to handle public defender cases.

Chairman Taylor talked to Judge Stadler and Judge Lympus about a phased-in system and that we would need their cooperation. Judge Stadler expressed concern about the trials that are currently set. Chairman Taylor suggested opening the office and begin accepting only new cases and keeping the contracted attorneys on their existing cases.

Commissioner Sherwood stated that generally speaking when looking at volume of cases it would be more cost and representation effective to change over to a system of full-time attorneys. He also asked Mr. Corrigan for the number of trials handled by public defenders in Flathead County last year.

The conference call ended and Dave Stufft continued with his public comment. Commissioner Sherwood asked Mr. Stufft how attorneys get on Bob Allison's list. He also noted that the national standard is that once there are 300 cases there should be a full-time office. Mr. Stufft responded that if the Commission decided to establish a state public defender office in his county that his "gut reaction" is to not stay on and do contract work after June 30th.

The Commission discussed the letter from the Kalispell attorneys (refer to Exhibit 3).

10:30 – 10:45 Break

10:45 Public Comment

Sean Hinchey, a private attorney from Kalispell told the Commission that he runs about 30 public defender cases at any give time and that the public defender cases make up one-third of his practice in workload and less than that in income. He stated that he's tried five cases in the last three and one-half years and he thinks the system in Kalispell is the best the way it is and that they will continue to handle these cases for less money.

Scott Carlson, a private attorney from Kalispell also talked about his experience handling public defender cases and the issue of there not being enough money.

Commissioner Nardi stated that he clearly understands the sacrifices that public defenders make.

Lane Bennett, a private attorney from Kalispell also told the Commission that the system they have works well in Kalispell and he is concerned that an office may become a revolving door because of the rate of pay.

Commissioner Hensley stated that she felt the letter from the Kalispell attorneys (Exhibit 3) was offensive. There was further discussion by the Commission about this letter.

Carol Johns, a private attorney from Wolf Point handed out a document (refer to Exhibit 4) as to the number of cases in that area. She stated that she supports the plan for Region 10.

11:45 Close Public Comment

12:00 – 1:00 Lunch Break

1:00 p.m. Back in Session

Mr. Freebourn asked that the strategic plan be posted to the office website sometime next week.

Chief Hood presented the strategic plan to the Commission (Refer to exhibit 5). Chief Hood addressed the following areas of this plan:

- The purpose of the plan is to identify how public defender services will be provided within the state
- How public defender services are provided today in the State of Montana
- The general features of Senate Bill 146 that established the Office of the State Public Defender
- The mission of the office
- The vision of the Chief Public Defender

- Goals and Objectives of the office. The Chief also made reference to the fact that a more detailed set of goals, objectives and actions items can be found in planning document.
- The Chief noted that the office will provide an emphasis on Native America issues
- Chief Hood provided a detailed discussion about the Organizational Structure of the office
- Thereafter, Chief Hood discussed the strategic plan for staffing and organizing each department within the central office, the Appellate Defender function, and each of the eleven regions.

The Commission discussed and made changes to each of the eleven Regions that will be reflected below in the motions.

Chief Hood also informed the Commission of her travels throughout the State and that she has met with the majority of the District Court Judges, a few of the lower courts and all of the attorneys in the Regions. She also informed the Commission that she has met with MACO (Montana Association of Counties).

3:40 – Break

3:50 Public Comment

Bill Boggs a private attorney from Missoula expressed concern about there being a place in the new system for contract attorneys.

Kelli Sather of the Missoula County Public Defender's Office stated that she agrees with the proposal for Region One. She stated that she would have applied for a public defender position in Kalispell if there would have been one and that she tried to get into the contracted system but couldn't get her foot in the door. She also asked why Kalispell should get a hybrid system when Ravalli doesn't get the choice.

Brian Smith of the Missoula County Public Defender's Office stated that retaining the existing employees is important. He also talked about having fewer attorneys in Kalispell but paying those more to attract more qualified attorneys and getting them to stay.

Lisa Kaufman a private attorney from Missoula asked about the number of attorney positions in Missoula.

Steven Eschenbacher a private attorney from Hamilton asked about the possibility of having attorneys move between regions to assist with the caseload.

Ed Sheehy, a private attorney from Missoula talked about the ACLU lawsuit being directed at Missoula County and Flathead County. He has professional experience with one of the Flathead County cases that was addressed in the ACLU lawsuit. He also took offense to Scott Carlson's comments regarding Native Americans.

Mariah Eastman of the Gallatin County Public Defender's Office talked about conflicts and the costs associated with those conflicts.

Scott Crichton of the ACLU stated that the lawsuit was focused on Missoula, Kalispell and five other counties. He further stated that the ACLU was not trying to single out practitioners. He expressed concern over the budget and stated that the Commission shouldn't "whittle away" at what is needed. He also stated that the ACLU lawsuit was dismissed three weeks ago.

Dave Stenerson a private attorney in Hamilton stated that he is happy with the new system and he commended the Commission for wanting to do this right. He also stated that Hamilton needs a fully staffed office instead of relying on contracted attorneys.

Kris Copenhaver-Landon, a private attorney from Billings spoke about the conflicts system; she stated she would like to see a statewide system that will help everyone out with conflicts.

3:45 Public Comment Ends

There was a process whereby the Commission approved with certain adjustments the strategic plan as presented by Chief Hood.

Region 1: Chairman Taylor proposed that on Chief Hood's plan for Region 1 that three FTE (Full-time equivalents) be done away with and that contract positions provide public defense work instead. However, he

mentions that Chief Hood be given the authority to phase in FTE's throughout the next year to replace the contract work.

Commissioner Nardi made a motion to adopt Chief Hood's plan for Region 1 in its original form with the exception that Whitefish becomes part of the Kalispell office and to give Chief Hood the option to use contract attorneys and let her phase out contracts and phase in state hired employees as she sees fit. Commissioner Fleming seconded the motion. Chairman Taylor noted that he thinks there should be a hybrid system in Kalispell but since he appears to be in the minority he will vote yes. The motion was passed unanimously.

A letter from William Boggs was handed out (refer to Exhibit 6).

A letter from Yellowstone County attorneys was handed out regarding DN cases (refer to Exhibit 7).

Region 2: Chief Hood discussed Region 2 and told the Commission that a new office had already been located in Missoula that will house both the Regional and Public Defender offices. Chief Hood proposed that one attorney, as listed in the presentation, be moved from the Regional Office to the Public Defender Office and that the plan add one additional attorney in the Public Defender Office. This would increase the number of attorneys in the plan for the public defender office from 13 to 15 and decrease the number of attorneys in the regional office by one. Commissioner Hensley moved to adopt the Region 2 plan; Commissioner Fleming seconded the motion, the motion passed with nine votes in favor and one vote in opposition. The dissenting vote was cast by Commissioner Donovan because the public defender and regional offices would be separate.

Region 3: Chief Hood presented the plan for Region 3 and proposed that one attorney be moved from the Regional Office to the Public Defender Office so there would be nine attorneys in Great Falls. She also indicated that the current receptionist position is not reflected in the plan and needs to be added. Commissioner Hensley moved to adopt the Region 3 plan as amended, Commissioner Bichsel seconded. The motion passed with nine votes in favor and one vote in opposition. Commissioner Donovan cast the dissenting vote because the public defender and regional offices would be separate.

Region 4: Chief Hood proposed removing the sex offender evaluator from Region 4. Commissioner Veazey moved to adopt the Region 4 plan as amended, Commissioner Hensley seconded it. The motion passed with nine votes in favor and one vote in opposition. Commissioner Donovan cast the dissenting vote because the public defender and regional offices would be separate.

Region 5: Chairman Taylor moved to approve the plan for Region 5 with the change that the region have the authority to have up to four attorneys in the Butte public defender office. Commissioner Sherwood seconded the motion. The motion passed with nine votes in favor and one vote in opposition. Commissioner Donovan cast the dissenting vote because the public defender and regional offices would be separate.

Region 6: It was proposed that an investigator be added to Region 6. Commissioner Kaercher moved to approve Region 6 with the addition of an investigator. Commissioner Donovan seconded the motion. The motion passed unanimously.

Region 7: Commissioner Nardi moved to accept the plan for Region 7. Commissioner Fleming seconded the motion. The motion passed unanimously.

Region 8: It was proposed that in Region 8 there be two investigators in the Regional Office rather than one as noted in the plan and that one attorney currently listed in the plan be deleted. It was also noted that the 8.5 FTE attorneys in the public defender office be increased to nine. Commissioner Kaercher moved to adopt the Region 8 plan with as amended. Commissioner Donovan seconded the motion. The motion passed unanimously.

Terry Seiffert's letter was handed out to the Commission (refer to Exhibit 8).

Region 9: Commissioner Kaercher moved to adopt the plan for Region 9. Commissioner Holton seconded the motion. The motion passed unanimously.

Region 10: Commissioner Veazey moved to adopt the plan for Region 10. Commissioner Hensley seconded the motion. The motion passed unanimously.

Region 11: Commissioner Fleming moved to adopt the plan for Region 11. Commissioner Donovan seconded the motion. The motion passed unanimously.

Chairman Taylor proposed that at the next Commission meeting, they should discuss (1) salaries of attorneys and staff and (2) a proposal to increase the contract rate for outside attorney services from \$60 per hour to \$80 per hour and that the death penalty rate should be \$120 per hour.

Commissioner Donovan made a motion that instead of having a sex offender evaluator in Helena as noted in the plan that a position for a mental health evaluator be considered instead and that the position be located in Butte. Furthermore, that this position report to Eric Olson, Training Coordinator. The motion was seconded by Commissioner Hensley and passed unanimously.

Commissioner Hensley moved to approve the organization chart as amended. The motion was seconded and passed unanimously.

Chairman Taylor proposed that the next meeting be held on April 21st and one-half day on April 22nd in Great Falls. He also proposed Friday, May 19th for the meeting in Butte.

Old Business

None

New Business

Scott Crichton talked about racism in the justice system.

Commissioner Nardi suggested that everyone read the standards before the next meeting and be prepared to make changes.

5:15 p.m. Meeting adjourned.

Exhibits 1 – 8 have been posted with these minutes to the Office of the State Public Defender website at: <http://www.publicdefender.mt.gov/>